

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

29512

**FILE:** B-215224**DATE:** October 9, 1984**MATTER OF:** Honeywell Information Systems, Inc.**DIGEST:**

1. Aggregation of unrelated requirement for replacement of one computer system (not IBM-compatible) and requirement to provide backup capability for separate IBM system is improper. Requirements should have been stated as separate line items with vendors free to propose on either. Moreover, GAO questions requirement for 8-year backup capability for computer system for which contracts expire in less than 2 years.
2. Requirement for "reentrant software"--a design specification--is improper where record does not provide full justification for specific requirement to exclusion of other approaches to providing same capability--multiuser access to programs. Although untimely, this question was considered at request of court.
3. Protest alleging vagueness in requirement for offered computer system to have 12 megabytes of memory is denied where protester offers system of such capacity and has not demonstrated how this requirement may have precluded protester's participation in procurement.

Honeywell Information Systems, Inc. (Honeywell), filed a protest with our Office against a procurement conducted by the Office of Personnel Management (OPM) under request for proposals (RFP) No. OPM-RFP-32-84. Prior to our resolution of the protest, Honeywell filed suit in the United States District Court for the District of Columbia, Honeywell Information Systems, Inc. v. Donald J. Devine, et al., Civil Action No. 84-2967. On September 28, 1984, the court filed

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an order requesting our decision by October 8, 1984. The contract was awarded to International Business Machines Corporation (IBM) on September 29, 1984. We sustain the protest in part and deny it in part.

OPM initiated this procurement to acquire a replacement for OPM's Honeywell-based "computing utility" located in Macon, Georgia, and, as part of the procurement, to convert that facility to be compatible with IBM computers. OPM contemplated that, with this conversion, the replacement system could also perform "double duty" at no additional cost by providing backup capability for the Civil Service Retirement System (CSRS) computer facility, which is IBM-based. (The contracts for the CSRS system expire in January 1986; as we understand it, OPM expects to recompute the CSRS system contract in 1985.) To accomplish its dual objectives, OPM initially sought a delegation of procurement authority, under the provisions of the Brooks Act, 40 U.S.C. § 759 (1982), from the General Services Administration (GSA) for the conduct of an IBM-compatibility limited procurement. OPM justified its request on the basis that a single IBM-compatible system would provide the most cost effective solution to both requirements. GSA did not approve OPM's proposed procurement strategy and instead issued a Delegation of Procurement Authority (DPA) which expressly did "not approve a compatibility-limited acquisition." OPM requested reconsideration of GSA's refusal to grant authority for a compatibility-limited procurement, but then withdrew the request after restructuring the RFP to allow non-IBM-compatible vendors to compete. As finally structured, the RFP allowed vendors to use one (or more) of three approaches:

1. Provide one IBM-compatible system that fulfills both the Macon replacement and the CSRS backup requirements;
2. Provide one system to meet the Macon replacement requirement and provide a separate IBM-compatible system to provide backup for the CSRS applications; or
3. Provide one system to meet the Macon replacement requirement and provide a separate service arrangement for backup at a commercial site.

The RFP called for a single award for both requirements. Vendors not offering Honeywell equipment for the Macon site would have the estimated cost of software conversion added to their offers. Under the RFP, both the Macon system being acquired and the CSRS backup capability have an expected system life of 8 years.

On July 23, 1984, GSA suspended OPM's DPA and further reviewed OPM's solicitation. As a result of modifications to certain technical requirements in the solicitation, GSA reinstated the DPA on August 24, 1984. In connection with this action, GSA states that:

"... we reviewed the three approach technique indicated in paragraph F.1.2 of OPM's RFP. If IBM or an IBM compatible vendor proposes Approach One, a major conversion effort must be considered in the economic evaluation. This conversion cost would have the effect of 'evening out' Approach One with Approaches Two and Three; therefore, OPM's stated approaches are not considered to violate the DPA."

In its final form, after reinstatement of the DPA, the RFP also contained certain technical provisions to which Honeywell objects:

1. The RFP required that vendors offer "fully reentrant" software; and
2. The RFP specified that vendors had to provide 12 megabytes (approximately 12 million characters) of memory.

#### HONEYWELL

Honeywell contends that OPM's combination of these two unrelated requirements in a single RFP unduly restricts the competition. In support of this challenge, Honeywell contends that approaches two and three, enumerated above, are illusory and impractical as competitive alternatives to approach one. It states that under approach two, for instance, the offeror must provide significantly greater computer resources than under approach one and, under

approach three, the prime offeror must bear the expense of providing the Macon replacement system as well as hiring and retaining full responsibility for a subcontractor to perform the backup service. Honeywell states that, as a consequence of the inclusion of the CSRS backup requirement in this RFP, competition for the Macon replacement system is limited to IBM-compatible vendors even though there is no independent need for IBM compatibility for the Macon system. Honeywell argues that OPM should determine the most cost effective solution to these two requirements by conducting two separate procurements.

Honeywell also contends that the requirement for "reentrant software" is unduly restrictive because there are other ways of performing the same function. (Reentrant software allows more than one user to use a single program simultaneously; Honeywell accomplishes the same objective by providing each user with its own copy of the same program.) Honeywell suggests that, with its more efficient executive software, its use of multiple copies of the same program is just as efficient as the use of a single reentrant program.

Honeywell also states that the RFP's requirement for 12 megabytes of memory is unreasonably vague and does not permit competition on a fair and equal basis. In this respect, Honeywell states that different computer manufacturers provide different operating systems and software which consume significantly different amounts of computer memory. (As an exaggerated example--one vendor's software might require 10 megabytes of memory, leaving only two megabytes for user programs, whereas another vendor's software might require only six megabytes, leaving six megabytes for user programs.) As a consequence, it is impossible to determine OPM's real need for memory available to the user and, as a result, it is impossible to ascertain which size computer OPM actually requires.

Sungard Recovery Services (Sungard), a commercial provider of backup services for IBM-based systems, has filed comments in support of Honeywell's protest. Sungard also asks that this procurement be split into two separate RFP's.

OPM

OPM asserts that the RFP accurately reflects its minimum needs. In this respect, OPM states that it conducted an extensive study to ascertain the availability of alternate sources of backup facilities for the CSRS system, including a review of other federal agencies and the capabilities of 42 timesharing service companies with federal contracts. Based on these studies, OPM concluded that incorporation of the CSRS backup requirement in the Macon system replacement RFP was the most cost effective alternative. OPM also states that "A non-IBM-compatible vendor could compete for the procurement as either a prime contractor or a subcontractor as long as the backup capability was provided in some manner within its offer."

With respect to Honeywell's latter concerns, OPM states that 12 megabytes of memory is well within the capacity of computers of the power required and asserts that no vendor was eliminated by this requirement. OPM also argues that Honeywell's objection to the requirement for reentrant software is untimely, because it was not filed until June 6, 1984, more than 10 working days after the initial closing date for proposals, May 15, and asserts that, in any event, this requirement is a legitimate reflection of OPM's need to acquire "state-of-the-art" technology to "meet anticipated future needs."

GAO ANALYSIS

There is a requirement for "maximum practicable competition" in government negotiated procurements. See e.g. Command Control and Communications Corporation, B-210100, Oct. 11, 1983, 83-2 C.P.D. ¶ 448; Educational Services Group (ESG), Management Concepts Incorporated, B-210420, May 2, 1983, 83-1 C.P.D. ¶ 466. The procuring agency has the primary responsibility for defining its minimum needs consistently with this requirement; we will not question an agency's determination of its requirements or the best method of accommodating them absent clear evidence that the agency's decision was arbitrary or unreasonable. Requirements which may limit competition are not unreasonable so long as they reflect the government's legitimate minimum needs. Duroyd Manufacturing Company, B-213046, Dec. 27, 1983, 84-1 C.P.D. ¶ 28, and cases cited

therein. The question here is whether, under the procurement statutes and regulations, this procurement was a proper aggregation of requirements which permitted maximum practicable competition.

In our view, this RFP did not satisfy the requirement for maximum practicable competition. OPM could fulfill both needs either by acquiring completely unrelated capabilities from equally unrelated vendors or by acquiring a single IBM-compatible system. These two requirements should have been stated as separate line items, with potentially multiple awards, with offerors permitted to propose either or both. This would have provided a clear basis for evaluation of these two mutually exclusive alternatives by comparing the cost of the best non-IBM-compatible offer plus the cost of backup capability against the cost of the IBM-compatible alternative. We can find no plausible justification for OPM's requirement for a single award and a contractual relationship between the providers, should the separate vendor approach offer the lowest cost acceptable alternative, nor has OPM suggested any. This was not, for instance, the procurement of a single large system for which the requirement for a single prime contractor is an acceptable restriction on competition. See e.g., Masstor Systems Corporation, B-211240, Dec. 27, 1983, 84-1 C.P.D. ¶ 23. We have held that if either an aggregate award or multiple awards would satisfy the agency's needs, that an aggregate award requirement is improper. 52 Comp. Gen. 47 (1972); Com-Tran of Michigan, Inc., B-200845, Nov. 20, 1980, 80-2 C.P.D. ¶ 407. Moreover, we do not understand why OPM finds it necessary to acquire an 8-year backup capability for a system for which the contract expires in less than 2 years.

Honeywell's protest, to this extent, is sustained.

Honeywell's objection to the requirement for reentrant software was not filed with our Office until June 6, 1984, after the May 15, 1984, scheduled closing date for the RFP. This contention is, as OPM suggests, untimely because Honeywell did not raise this objection prior to the initial closing date for proposals. 4 C.F.R. § 21.2(b)(1) (1984). We will consider, however, this question since the court has requested our views on the matter.

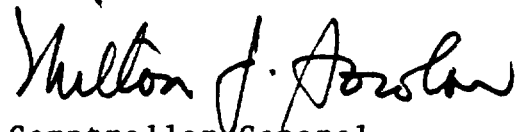
Although the use of design specifications does not automatically provide a basis for determining that a solicitation is unduly restrictive, Christie Electric Corporation, B-197481, Oct. 14, 1980, 80-2 C.P.D. ¶ 273, design requirements have been held to be inappropriate where an agency had the capability to express its minimum needs in terms of performance specifications which alternative designs could meet. Viereck Company, B-209215, Mar. 22, 1983, 83-1 C.P.D. ¶ 287. Both reentrant software and Honeywell's approach accomplish the same purpose--multiuser access to a single program. On the record before us, OPM's justification for requiring reentrant software is inadequate to establish the need for one method to the exclusion of the other.

Honeywell's protest is sustained on this issue.

Honeywell's protest against OPM's requirement for the offered system to have 12 megabytes of memory is denied. Honeywell offers systems of such capacity and has failed to demonstrate how this requirement may have precluded its participation in the procurement.

#### RECOMMENDATION

The determination whether to recommend termination and recompetition of an improperly awarded contract involves the consideration of several factors, including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other offerors or the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement and the impact on the procuring agency's mission. See System Development Corporation, B-191195, Aug. 31, 1978, 78-2 C.P.D. ¶ 159. On the basis of the significant prejudice to this competition which we believe resulted from the structure of the RFP, we recommend that OPM invite offers from acceptable non-IBM-compatible vendors and perform a cost comparison as described above. If this evaluation, including costs of termination, would be in the best interest of the government, we recommend that the contract be terminated and award made on the alternative basis.

*for*   
Comptroller General  
of the United States